



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/663,163 | 09/15/2003 | Steven M. Bennett | 42P15752 | 2836 |

7590 10/14/2008
Marina Portnova
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
Seventh Floor
12400 Wilshire Boulevard
Los Angeles, CA 90025

| |
|----------|
| EXAMINER |
|----------|

TO, JENNIFER N

| | |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

2195

| | |
|-----------|---------------|
| MAIL DATE | DELIVERY MODE |
|-----------|---------------|

10/14/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

| | |
|--------------------------------------|---------------------------------------|
| Application No. 10/663,163 | Applicant(s) BENNETT ET AL. |
| Examiner JENNIFER N. TO | Art Unit 2195 |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 September 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: N/A.
Claim(s) objected to: N/A.
Claim(s) rejected: 1-58.
Claim(s) withdrawn from consideration: N/A.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Meng-Ai An/
Supervisory Patent Examiner, Art Unit 2195

Continuation of 11, does NOT place the application in condition for allowance because:

In the remark with respect to claims 30-49, applicant argued that claims 30-49 are not comprised software alone and encompass a hardware implementation for execution. Therefore claims 30-49 are statutory.

Examiner respectfully disagreed with applicant. Although applicant pointed out FIG. 1 and paragraph [0037] of the specification disclosed that step of the invention might be performed by a specific hardware components that contain hardwired logic for performing steps. However, the phrase "might be performed by a specific hardware components" indicated there is a possibility that it is performed by software. In addition, the claimed did not claimed the hardware part. Applicant is reminded that examiner interpret the claims in light of the specification. Thus claims 30-49 recited a apparatus contained only software modules. Software alone is directed to a non-statutory subject matter.

In the remark, with respect to claim 1, applicant argued that Shorter fails to teach identifying a predefined behavior of a virtual machine monitor with respect to one or more virtual machines.

Examiner respectfully disagreed with applicant. Shorter teaches the pool manager scanning its control block that represent VMs in the VM pool, compare whether the USER ID in the allocate matches the entries in the data structure (the entries in the data structure are the predefined behavior of the VMM), and by scanning itself, the pool manager (VMM) identifying a predefined behavior of itself with respect to one or more virtual machines (col. 11, lines 60-64). Thus, Shorter teaches identifying a predefined behavior of a VMM with respect to one or more virtual machines.

In the remark with respect to claims 9, 19, applicant argued that Shorter fails to teach determining that a transition from a virtual machine monitor to a virtual machine is about to occur.

Examiner respectfully disagreed with applicant. Shorter teaches under certain situation, the system has to switch between VMM and VMs. VMM and VM had to run serially. As the system is switching between VMM and VM, it needs to know whether VMM is switching into an existing VM or a new VM. VMM makes a determination how to invoke the virtual machine based upon the PRID and THRID, the VMM can determined what is the transition to the VM, first transition is to a new VM or subsequent transition to an existing VM (Shorter, claim 1, steps A-C, abstract; col. 14, lines 47-66). Thus, Shorter clearly teaches determining that a transition from a virtual machine monitor to a virtual machine is about to occur.